

STATE OF WASHINGTON – CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD
SURVEY QUESTIONNAIRE RESULTS

1. How many cases have you participated in before the Board?

(1) 16 (2) 5 (3) 3 (4) 6 (5+) 11

2. How were you represented in your case(s) before the Board?

☐ I am an attorney (24)

☐ I was represented by an attorney (3)

☐ I represented myself, *pro se* (14)

3. How would you rate the process and conduct of the **Prehearing Conference**?

☐ Very poor (0)

☐ Poor (0)

☐ Adequate (7)

☐ Good (9)

☐ Very good (25)

☐ No opinion (0)

4. How would you rate the process and conduct of the **Hearing on the Merits**?

☐ Very poor (0)

☐ Poor (2)

☐ Adequate (7)

☐ Good (8)

☐ Very good (20)

☐ No opinion (5)

5. How would you rate the process and conduct of the **Compliance Hearing**?

☐ Very poor (0)

☐ Poor (1)

☐ Adequate (2)

☐ Good (3)

☐ Very good (15)

☐ No opinion (21)

6. How would you rate the format and organization of the **Prehearing Order** and **Order on Motions**?

☐ Very poor (0)

☐ Poor (0)

☐ Adequate (7)

☐ Good (11)

☐ Very good (21)

☐ No opinion (3)

7. How would you rate the format and organization of the **Final Decision and Order**?

☐ Very poor (0)

☐ Poor (8)

☐ Adequate (4)

☐ Good (12)

☐ Very good (14)

☐ No opinion (4)

8. Which Board Member was the **Presiding Officer** in your case(s)?

☐ Joseph W. Tovar (28)

☐ Edward G. McGuire (24)

☐ Lois H. North (16)

☐ Bruce C. Laing (5)

9. How would you rate the OVERALL quality of service provided in your dealings with the Presiding Officer?

☐ Very poor (0) ☐ Poor (2) ☐ Adequate (2) ☐ Good (4) ☐ Very good (33) ☐ No opinion (3)

10. How would you rate the quality, promptness and courtesy of service provided in your dealings with Board **staff**?

☐ Very poor (0) ☐ Poor (1) ☐ Adequate (2) ☐ Good (2) ☐ Very good (34) ☐ No opinion (3)

11. What suggestions do you have to improve the Board's processes or the **Rules of Practice and Procedure** (WAC 242-02)?

See narrative results

12. Have you used the Board's **Website**?

☐ YES (32)

☐ NO (9)

13. Have you used the Board's **Digest of Decisions**?

☐ YES (31)

☐ NO (10)

3. How would you rate the process and conduct of the **Prehearing Conference**?

- Ground rules and expectations were clearly stated and adhered to – very professional.
- The process gives an unfair advantage to the jurisdiction (respondent) with regard to the preparation of the Index. The respondent can withhold documents helpful to the case of the petitioner (they shouldn't, but do and can).
- I think the process before the prehearing conference is confusing to citizens. A "how to" booklet that in particular explains standing, "what is a PFR" and explains that the Board's only duty is to decide whether or not there is compliance with the GMA would be very helpful. I made this recommendation before.
- Developing a coherent statement of issues is very important, and was done very well in both cases.
- A little more flexibility in scheduling would be nice.
- Good – when the city requested more information from the petitioner, she told them to review the Practice and Procedure. She did not give us enough on the process.
- I think the Board is competent and professional in the process and conduct of all aspects of the case that I am working on – which has been before the Board since 1994 and has resulted in at least five substantive decisions and too many procedural decisions to keep track of. I would suggest that the Board make greater use of e-mail and encourage the parties to do so as well. Even if filing and service of hard copies is still required in all instances, the simultaneous transmission of electronic copies of briefs, orders and decisions is useful. This is particularly true where there will be subsequent judicial review.
- Well organized. The presiding officer clearly is familiar with the case.
- Good. When the City and Intervenor asked that the petitioners include argument in the PFR Ms. North told them to review practice and procedures. Spent most of time listening to arguments for City and Intervenor who wanted more time and more facts relating to our PFR. Not enough on explaining roles and procedures for both sides. User-friendly brochure outlining purpose and procedure and FAQ would be helpful.
- Issue discussion, schedule coordination. Management of process.
- Timeline and procedure explained with an attitude of helpfulness.
- Relaxed atmosphere made tone conducive to settlement possibilities, adjusting schedules, etc.
- Any questions following the conference were welcomed and answered by the GMHB office. More detailed information about the appeal procedures prior to the conference would have been helpful (i.e. what to expect at the prehearing conference).
- Board members were well prepared, cooperative in accommodating scheduling issues.
- Informative. Helpful in preparation for hearing.

- Seemed they had their minds made up before the testimony. The process was very orderly and everyone could speak, but we had the feeling we were not really being heard.
- The hearing was done in a concise and professional forum. The Board members were extremely cordial and fair to all parties present.
- I appreciate the Board's willingness to tell a petitioner to re-draft issues so that the respondent knows WHY the appeal was filed.
- The time was used well. Attorneys were on both sides which helped no doubt. The members have come well versed in most of the issues.
- The prehearing conferences are generally helpful and well-conducted. However, I believe that Board Members should treat them less casually and always wear professional attire (i.e. no jeans). I fully appreciate why it may seem appropriate to be much more casual at PHCs than HoMs, but the importance of the proceedings counsel in favor of a high degree of formality. The Board is reviewing the decisions of elected leaders.
- They have become more efficient over time. The statement of issues still tends to lose the forest for the trees.
- It is inappropriate for the Board to assist one party, typically the petitioner, to frame the issues. It is up to the party to frame the issue as they choose, as is the case in court. Courts do not re-write the issues presented by a party, and neither should the Board, also a quasi-judicial body.
- Quick, no-nonsense.
- Usually very efficiently run.
- Well managed. Very objective and professional.
- I particularly appreciate the Board's facilitation of the clear description of the issues on appeal and the statutory provisions which applied.
- I have seen improvement. The prehearing is shorter, more efficient. Guard against using the prehearing to amend the PFR. Petitioners should not be allowed to expand their issues. The prehearing should ideally narrow and focus the issues.

4. How would you rate the process and conduct of the **Hearing on the Merits**?

- The Board Members' questions reached the heart of the legal issues. It would be helpful to always clarify at the beginning of the hearing exactly the amounts of time per side and what is really allowed on rebuttal.
- The Board has been flexible in responding to the parties' scheduling and briefing requests – a good thing. The Board has generally been sensitive to fairness regarding briefing, but should be mindful of the structural bias which favors petitioners, eg, open-ended front time for opening brief, and right to file a reply brief to which respondents do not respond. Board should enforce reply rules (*See* RAP 10.3(c)) in briefs and oral argument to minimize “sandbagging” and structural bias favoring petitioners.
- Within the parameters of statutory authority, the 3 hearings have been conducted as well as could be expected. The questioning by Board Members, especially recently, has been on point.

- I appreciate the Board's patience and politeness.
- Each party of different views were allowed to present their case.
- Start hearings early enough that public input can actually have some impact on the decisions. By the time the public are aware of a problem it is usually too late to really undo the project.
- Fair and impartial.
- I was very disappointed that the Board did not acknowledge the County's failure to assure that drainage issues would be mitigated. There was no evidence because the study had not even begun. Now the study is completed and a plan is underway to eliminate the farms rather than solve the storm water problem that is the result of their proceeding with development. The permits required are from state and federal agencies, not the County.
- Again, Board Members well prepared – nice balance between letting folks say their piece and maintaining order and control.
- Arguments by appellants (pro se) were given adequate time and not rushed. Time for appellants to discuss arguments before starting the rebuttals would have been helpful.
- In the first case (in 1996), much time was wasted on irrelevant legal argument. I believe this has changed.
- QUESTIONS WERE DEFERRED UNTIL THE END OF PRESENTATION. It would have been helpful for the Board to ask questions about what is on Board Members' mind during oral argument.
- Good format. Board was respectful of all parties. Board asked reasonable questions.
- Good. Two Board Members asked good questions to clarify petitioner's argument. PO couldn't remember important details. She rushed through complex hearing on expansive rezone ordinance because she wanted to go to lunch at noon. Required petitioners to provide copies of City's Comp Plan which was available to the Board on internet. Held petitioners to higher standard than the City. Allowed three attorneys to represent the City position. Allowed City and Intervenor to use different method of service of papers (hand delivered to Board, mailed to petitioners – missing deadline!).
- Professionally done. The Board is clearly in control. Even-handed with the parties.
- Two Board Members asked good questions. The Presiding Officer rushed us to finish the meeting by 12 noon for lunch (her words) rather than taking the time to listen and clarify the information presented. She "tuned" us out as she had other things on her mind. Didn't listen to the details in the complex appeal.
- The room is usually too small and too dark. A little more flexibility in scheduling would be nice.
- Allowing adequate time for argument, Board Member preparation. And questions on issues all contributed to an effective hearing process.
- Sometimes I think the Board gets tired of the details and misses important issues. For simple cases they do a great job.
- Length of hearing should expand with complexity of issues.

- In most cases, a full morning is not necessary for the hearing. Most parties do not state arguments that are not already made in the briefs. Perhaps one hour should be allocated as the norm, with the ability for parties to make a motion for more time if they truly need it.

5. How would you rate the process and conduct of the Compliance Hearing?

- I appreciated that the Board allowed the hearing to be conducted by telephone.
- First such hearing is just coming up. So far, the procedural aspects have been handled well with the Board being firm but accommodating.
- Most people were allowed to speak but there is much overlapping – perhaps that is necessary to make a point.
- Each participant's input was allowed without Board comment, a plus factor. When questions were asked, they were directly to the point. Obviously a considerable amount of planning was done in formulating such hearings.
- Only one, and it went on without a hitch. Again, my opposition and I worked out the bugs before the hearing.

6. How would you rate the format and organization of the Prehearing Order and Order on Motions?

- I would put the prehearing agenda first, then the proposed schedule.
- Prehearing Order is very helpful to keep everyone on track, especially when pro se are involved.
- As stated previously, the process, organization and format were done with a considerable amount of pre-planning. The conduct of the Board was done in a professional manner and within the standard rules of order.
- Motions were adequately considered and the Order was promptly issued.
- Orders and motions repetitious of what was already there. Rationale for decisions often one-sided rather than taking arguments on both sides equally. Previous hearing by Tovar was more comprehensive, but was dismissed by stipulated agreement.
- Maybe a little TOO detailed on the history.
- Single-spaced with huge paragraphs is hard to read.
- This is much better than 4 – 5 years ago.
- Brief and to the point.

7. How would you rate the format and organization of the Final Decision and Order?

- Brief and to the point. (one dismissed re: jurisdiction and one settled).
- Consider adjusting format (or using a template) to assure that final decisions and orders expressly dispose of all issues in the manner required by the GMA and APA, specifically RCW 34.05.461(3).
- Way too long. You've got to find a way to issue a decision in 10 – 25 pages instead of 50 +.

- Sometimes the linkage between the analysis and the result is unclear, leaving ambiguity regarding precisely what findings of fact and conclusions of law were made. See, for comparison, decisions of the WUTC.
- Rambled on and made subjective remarks critical of the petitioner. Made inaccurate statements regarding information presented by petitioner.
- I find the detailed and lengthy listing of procedural steps and issues maddening. I think a concise summary would be better (with the detailed listing attached as an appendix). Information needed to cite the decision should appear on the first page, such as the date of the decision.
- Well organized. Chief holdings are easy to find.
- Rambled on and made subjective remarks critical of the petitioner. Made inaccurate statements regarding information presented by petitioner. Much repetition of previous information rather than explaining reason for decision based on information from both sides and practice and procedure in WAC and RCW 36.70A. I felt the decision was biased in favor of the City and Intervenor because they had 3 attorneys and Intervenor on one side.
- I think the Board's FDOs are well written, clear and clearly cite to relevant authority. A uniform citation form for all the Boards would be good.
- The format of summarizing arguments rather than a detailed discussion of the evidence results in decisions that focus on advocacy rather than factual findings.
- Again, friendliness and fairness. Both sides had sufficient time to present case.
- The order was clearly written and given adequate detail.
- The inclusion of all procedural information in the body of the order makes the order extremely cumbersome – is that necessary?
- FDOs have improved over the years but remain somewhat hard to navigate, particularly for less-sophisticated clients.
- Very FAIR with due process given to the subject matter, consistent with rules, concept and goals of the GMA.
- Much better than the early days. Shorter (at least for my cases) and to the point.
- Somewhat confusing in its structure. More care should be taken to organize the sections. They tend to be repetitive and overlap.
- Many of the Growth Board decisions I read have very lengthy recitation and procedural history that is unnecessary.
- Early Board decisions were too long and unnecessarily detailed. This problem has been almost entirely eliminated.
- Sometimes fails to address all arguments raised.
- It depends on the case. Generally, however, the opinions would be more useful if the Board approached them more like judicial opinions. There is too little statement of the relevant facts (the facts that are stated tend to be no more than procedural), too much statement of the parties' arguments and too little statement of the Board's legal reasoning in light of the operative relevant facts.
- Put the decision and analysis up front. No one's rushing to read the procedural history. The WWGMHB includes a synopsis at the beginning of its FDOs – consider using that format.
- Don't need to see every detail of the procedural history.

9. How would you rate the OVERALL quality of service provided in your dealings with the Presiding Officer?

- In my view, Board Member Tovar requests too many post-hearing submittals that may address issues about which he is curious but are not relevant enough to justify the extra work it sometimes takes to gather these materials.
- The hearing was held in a precise manner, each facet being covered. Let me state that as a former supervisor over approximately 150 personnel and 7 subordinate supervisors, I would gladly have these people working for me.
- All good with the exception Ms. North, who was a little hard to track.
- New evidence was not allowed that would have proven the inadequacy of the County's plan – evidence that was NOT available during the County's hearings. Our farm is very much in jeopardy because state and federal agencies are not willing to grant necessary permits.
- Questions were readily answered.
- The presiding officer was firm, fair and allowed reasonable flexibility.
- Held petitioners to a higher standard than the City. Did not require preliminary list of core documents per WAC 242-05-52001. Did not honor our request for "sufficient identifying information to distinguish documents." WAC 242-02-520. But left it up to us to spend hours reviewing over 11,000 pages of index full of duplications and irrelevant material to locate Index numbers for documents. Allowed City and Intervenor to use different methods of service of papers which was hand delivered to the Board, but mailed to petitioners on due date and not received by the deadline giving petitioners less time to respond. Failed to require City to add Comp Plan to Index even though the legal issues related directly to compliance with Comp Plan. Required petitioners to copy City's Comp Plan even though it was available to the Board on the internet.
- Organized, low-key and professional.
- She did not ask any good questions. She couldn't remember important details. More interested in finishing by 12 noon and going to lunch than merits of case. Held petitioner to higher standard than City. Required petitioner to supply 6 copies of Comprehensive Plan which City would not supply and is on the internet and readily available at the CSPGMHB office. She did not require the City to supply "Core Documents" as stated in WAC 242-02-520. She did not require the City to supply "Preliminary List of Core Documents" as stated in WAC 242-02-52001, but left it up to the petitioners to spend hours reviewing 11,000 pages of the Index which was full of duplications and irrelevant information. She didn't require them to meet the deadlines to get the information to the petitioners as timely as they did the Board.
- High level of professionalism – created a respectful and thoughtful tone.
- Conduct of proceedings has been professional, courteous and efficient.
- Both were very courteous and professional.

10. How would you rate the quality, promptness and courtesy of service provided in your dealings with Board staff?

- Susannah has been extremely helpful, especially when I made inquiries as a first-time petitioner.
- Based on extensive experience with office staff at several public agencies, the Board staff is exceptional. They are very responsive, courteous, helpful and knowledgeable. Any suggestions? Triple their compensation.
- This is much better than 4 – 5 years ago.
- Timely distribution of Notices and Orders; efficient scheduling of phone conferences; and pleasant responsive staff all make dealing with the Board process a rare pleasure.
- Always helpful.
- Answering questions of practice and procedure. Timely response to phone calls. Gave access to public files on relevant cases. Shared availability of Wizard format of numbered legal paper.
- Kept us well-informed and provided punctual information.
- Answered questions of practice and procedure. Timely response to all phone calls. Gave access to public files on related cases. Sent info on how to use Wizard format of numbered legal paper.
- Board staff have always been very helpful. One time I was looking for a file at the Board's office and staff checked the files and then checked other parts of the office for the file. Great service!
- A change of location happened during this case. We knew where the new location was.
- Wonderful about sending cases needed for research. I did not have access to a good computer.
- Calls to staff were welcomed and all questions were answered to the caller's satisfaction. Faxes to staff were given all necessary assistance.
- Always responsive and willing to help within the structures of statutes and Board rules.
- A congenial yet business manner was prevalent throughout the process. Suggestion: Keep these same people on board, they are TOP QUALITY!
- Always friendly to me. Helpful when there are small errors to correct.
- Susannah is great. Very helpful! Give her a raise!!
- Courtesy is very good. A few promptness issues.
- At times they are awful. In particular, they only copied half the record for an appeal and were not very willing to get it corrected.
- Outstanding. Great customer service.

11. What suggestions do you have to improve the Board's processes or the Rules of Practice and Procedure (WAC 242-02)?

- Page limits in 570(3) should be used – change “may” to “shall.”
- They're good.

- While it is understandable that the Board intends to comply with RCW 36.70A.300(2), the parties would generally prefer that the Board take the time necessary to reach a correct result, with a process fair to both parties, rather than have that statute be the driver. Consider allowing the parties to stipulate to an extension, regardless of “settlement” context. It would be great if WAC 242-02-520 were amended to provide a workable definition of the “record.” The record is a recurring problem. “All materials used...” by who? “in taking the action.”
- My clients have to go to considerable expense on the Board’s procedures before even the most frivolous claims can be dismissed by the Board on a motion. There should be a shorter way to do this, or the Board should use its authority to dismiss these matters on their own.
- I can not point my finger on it, but something could improve.
- It’s very difficult to have every person leave feeling that he or she has been heard. Until an issue affects someone directly, the people aren’t apt to get involved – public notice on telephone poles don’t do much good. Word of mouth – personal initiations, but I don’t have the foggiest idea how to do that efficiently.
- Don’t take so long to make a decision.
- The legal procedures could be simplified for the non-lawyer.
- I think the rules are good. I recommend that the rules allow electronic filing of all documents and explicitly address the procedures and criteria for stays to be issued by the Board.
- The legislature created the Hearings Board so an ordinary person could make appeals without the expense of hiring an attorney. WAC 242-02 is more stringent in timelines and procedures than superior court. I do not believe this was the legislature’s intent. To win cases before the Board almost requires the petitioners to hire an attorney to get a fair hearing.
- The Practice and Procedure is more stringent in timelines and procedures than it would be to go to superior court, which requires petitioners to hire an attorney to get a fair hearing.
- None – they are comprehensive, balanced and clear.
- Nothing about the rules – just more help for citizens on the basics. Remember that only citizens can “enforce” the GMA. There are no other “teeth” in the law. Making the process more citizen-friendly would be helpful.
- Board (to be fair to petitioner) should be more flexible in allowing subpoena power. Without witness testimony and/or the ability to force release of certain documents the petitioner, in certain cases, are severely disadvantaged.
- Generally, the time allowed by the rules for preparation of the index should be longer.

12. Have you used the Board’s Website?

- The ability to locate and download decisions is invaluable! Improvement: Some old files still need cleanup to URLs etc and Word versions. If electronic copies of prehearing briefs and reply briefs were added this would aid understanding of decisions.

- The cases. Being able to search the website content (cases) for key words. Most citizens don't have access to the legal search engines.
- New decision summaries are particularly helpful.
- Not particularly helpful.
- Did not find it particularly useful. It was being revised during much of the case.
- The decisions and digest. I am glad the new decisions are in pdf format to better cite to page numbers.
- Searchable decisions, rules.
- Explanation of procedures. Increased consistency between instructions on the website, printed materials, and verbal assistance by telephone. Some subtitles were not completely clear.
- Need a better search engine. I realize this may be beyond Board's budget, but since Code Publishing was cancelled, searching cases is much more difficult and providing clear citations to specific pages is virtually impossible. Could the Board scan decisions so those come up with correct page numbers consistently on different computers.
- Directions, member biographies.
- Standard pagination is needed. All Board decisions should be available in either Word or pdf (adobe) format, so that parties can cite to correct page numbers. The Board has started using pdf for new decisions, but this is no help for all the unpaginated HTML decisions that are still posted. **THE BOARD SHOULD CONVERT ALL POSTED DECISIONS TO PDF FORMAT.** Also, the Board's website should include a search engine to allow searching of decisions.
- Very helpful.
- The ability to search for terms is very limited. I usually go to a different source to conduct searches and then return to print decisions.
- It is quite easy to find cases on. All decisions should be available online.
- Access to decisions is useful. PDF or Word format for all would be ideal.

13. Have you used the Board's **Digest of Decisions**?

- Subject index invaluable.
- It is all quite helpful. Thank you for doing it. Citations to page numbers in decisions over 10 pages would make it more useful.
- With online search capabilities, an index may be less necessary but it was vital. A better (more complete) system would be helpful, but probably requires hiring a pro to set the system up, rather than having to rely on Board Members to do it alone.
- Updates would be helpful.
- It can be difficult to cite to a particular portion of a decision. Citations to particular page references are difficult using different versions of decisions.
- I like the Digest a lot. One way in which it could be improved on the website would be to create hyperlinks to the Board's decisions. So, for example, after reading a holding in a capital facilities or transportation case, one could just click on the link and go straight to that decision.

- Cases on point found rather easily (when they exist). When do the 2002 cases enter their own synopsis?
- How do you find out which decisions have been reversed or modified by either the Board or the courts?
- Again, do not have but would like to. Vital Board case research tool, particularly without Code Publishing. Please continue annual updates.
- EXTREMELY USEFUL. I think this is one of the best tools out there on the GMA – please continue to use it and keep it updated.
- It would be nice to be able to search the Board's decisions by keywords, etc.
- Clickable subject index and citations are HUGE timesavers. Improvements: update annually or even quarterly.
- Providing it on CD in a searchable format.
- As the body of decisions grows, some expansion of indexing/topical categories and other organizational or search terms may become necessary.
- I have found it particularly cumbersome to determine when subsequent action (court decisions, compliance hearings, remands, etc) change a particular holding.
- Decisions on: land use zoning, critical areas, development regulations, environmental impacts, public notices, public participation and fish and wildlife.
- Reconcile pagination.
- Decisions that show relevance to development regulations, environmental impacts, public notices, public participation and fish and wildlife. Cross referencing was confusing. While we used cases as standards, it was hard to find all those relevant to the legal issues which were spread out through the index.
- Very good. Keep them up to date. In the Central Board Digest, I would move the key word index/table of contents up front.
- Index and case summaries.
- The overview of decisions by type was most helpful. Further information about meaning and purpose of the decision groupings would be helpful.
- Excellent resource.